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January 9, 2003

Thomas C. Nash
Assoc. Regional Counsel
US EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

US EPA RECORDS CENTER REGION 5



464410

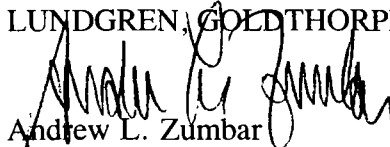
**RE: Chemical Recovery systems, Inc.
142 Locust St. Elyria, Ohio
CERCLIS #OHD 057-001-810
Miller Studios, Inc.**

Dear Mr. Nash:

Enclosed please find my client's executed Administrative Order on Consent in regard to the above referenced matter. Please process this accordingly, and provide notice as to when the EPA is prepared to accept payment.

Very truly yours,

LUNDGREN, GOLDTHORPE & ZUMBAR


Andrew L. Zumbar
Attorney at Law

ALZ:rh

Enclosure

cc: John Basiletti

VIA CERTIFIED U.S. MAIL RETURN RECEIPT REQUESTED

CERCLA SECTION 122(g)(4) DE MINIMIS CONTRIBUTOR
ADMINISTRATIVE ORDER ON CONSENT

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**CERCLA SECTION 122(g)(4) DE MINIMIS CONTRIBUTOR
ADMINISTRATIVE ORDER ON CONSENT**

IN THE MATTER OF:

)
) U.S. EPA
) Docket No. _____

CHEMICAL RECOVERY SYSTEMS, INC.)
142 Locust Street, Elyria, Ohio)
CERCLIS ID# OHD 057 001 810)

Proceeding under Section 122(g)(4))
of the Comprehensive Environmental)
Response, Compensation, and)
Liability Act of 1980, as amended,)
42 U.S.C. 9622(g)(4))

**ADMINISTRATIVE ORDER
ON CONSENT**

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E (May 11, 1994). This authority has been re-delegated by the Regional Administrator to the Superfund Division Director on May 2, 1996.

2. This Administrative Order on Consent is issued to the persons, corporations, or other entities identified in Appendix A ("Respondents"). Each Respondent agrees to undertake all actions required by this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability by any Respondent. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

II. STATEMENT OF PURPOSE

4. By entering into this Consent Order, the mutual objectives of the Parties are:

- a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 6922(g), that allows Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;
- b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site; and
- c. to obtain settlement with Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning

assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Consent Order identified by an arabic numeral.

h. "Parties" shall mean EPA and the Respondents.

i. "Respondents" shall mean those persons, corporations, or other entities listed in Appendix A.

j. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

k. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

l. "Site" shall mean the Chemical Recovery Systems Inc. Superfund Site, encompassing approximately 4 acres, located at 142 Locust Street in Elyria, Ohio and depicted more clearly on the map attached as Appendix B.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. STATEMENT OF FACTS

6. The Site is approximately four (4) acres (with several lots within the 4 acres), and is located at 142 Locust Street (formerly Maple Street) in a predominantly commercial/industrial area near the central business district of the city of Elyria, in Lorain County, Ohio. The Site occupies a part of a peninsula jutting into the Black River. The western boundary of the Site runs along the bank of the East Branch of the Black River ("River"), the northern boundary adjoins property owned by the Englehard Chemical Company (formerly Harshaw Chemicals), the eastern boundary runs along Locust Street and Englehard Chemical Company, and the Site's southern boundary adjoins the property of M&M Aluminum Siding. Presently, Mrs. Dorothy Obitts owns the Site. She leases it to the M&M Aluminum Siding Company. The Site is presently used for storage purposes. Two buildings remain on Site; located in the southeast corner of the Site is a combination warehouse/office building, and a Rodney Hunt Still building. The foundation from the former Brighton Still building is located in the northwest corner. Two sumps located inside of the still buildings allegedly were used to dispose of waste. One of the sumps located in the shell of the Rodney Hunt building is easily identified. Information regarding the construction of these sumps or where the collected waste from the sumps were disposed of is unknown. The Site is fenced in on all sides except for the side bordering the River, which is overgrown by heavy vegetation. The Site is characterized as a Superfund Alternative Site. This designation indicates that the Site has not been placed on the National Priority List (NPL) yet, but that U.S. EPA, having compiled a pre-scoring package on the risks presented by the Site, intends to treat it as a NPL site and retains the option of nominating the Site for inclusion on the NPL. The Site was used for solvent reclamation activities for

twenty years from approximately 1960-1980. Numerous substantial releases of hazardous substances at the Site have been documented.

7. Hazardous substances have been or are threatened to be released at or from the Site. These releases have been documented in photographs, witness statements, and other documentary evidence. Extensive contamination of Site soils and groundwater with volatile organic chemicals is documented in previous investigations. U.S. EPA and Ohio EPA have completed and issued the following Site-related reports: on April 26, 1982, U.S. EPA completed a Hydrogeologic and Extent of Contamination Field Investigation Study and issued a report (U.S. EPA 1982-FIT Project Report); on August 8, 1995, U.S. EPA issued its Focused Site Inspection Prioritization Site Evaluation Report. On September 29, 1997, Ohio EPA, having conducted a Site Team Evaluation Prioritization Investigation at the Site, issued a report on the investigation (OEPA 1997, STEP Report).

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In addition to the investigations and reports referenced in the previous paragraph, U.S. EPA has entered into an Administrative Order on Consent with 24 PRPs for a Remedial Investigation and Feasibility Study at the Site to be undertaken by those 24 PRPs.

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

10. Each Respondent listed on Appendix A arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent.

11. The amount of hazardous substances contributed to the Site by each Respondent does not exceed 55,000 gallons of materials containing hazardous substances and the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

12. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is between \$1,500,000 and \$2,250,000. The payment required to be made by each Respondent pursuant to this Consent Order is a minor portion of this total amount. EPA has identified persons other than the Respondents who owned or operated the Site, or who arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such persons at the Site, or who accepted hazardous substances for transport to the Site. EPA has considered the nature of its case against these non-settling parties in evaluating the settlement embodied in this Consent Order.

V. DETERMINATIONS

13. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

a. The Chemical Recovery Systems Inc. Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Each Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

d. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

e. The actual or threatened "release" caused the incurrence of response costs.

f. Prompt settlement with each Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

g. As to each Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

h. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. ORDER

14. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

VII. PAYMENT

15. Within 30 days of the effective date of this Consent Order, each Respondent shall pay to the EPA Hazardous Substance Superfund the amount set forth in Schedule C, attached. **[Schedule C will be attached to the copy of this Order which is signed by U.S. EPA's Superfund Division Director, and it will contain the names and payments of all parties who sign this Order. The payment assigned to your company will be the dollar figure given in the cover letter sent with this Order].**

16. Each Respondent's payment includes an amount for:
a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondents' payments are based.

17. Each payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making

payment, the Site name, the EPA Region and Site Spill ID Number 0521, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency, Region 5
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

18. At the time of payment, each Respondent shall send notice that such payment has been made to:

Thomas C. Nash C-14J
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

VIII. FAILURE TO MAKE PAYMENT

19. If any Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. In addition, if any Respondent fails to make full payment as required by Paragraph 15, the United States may, in addition to any other available remedies or sanctions, bring an action against that Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(1) of CERCLA, 42 U.S.C. § 9622(1), for failure to make timely payment.

IX. CERTIFICATION OF RESPONDENT

20. By signing this Consent Order, each Respondent certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation,

treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

X. COVENANT NOT TO SUE BY UNITED STATES

21. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against any of the Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Respondent upon receipt of that Respondent's payment as required by Section VII. With respect to each Respondent, individually, this covenant not to sue is conditioned upon:

a. the satisfactory performance by Respondent of all obligations under this Consent Order; and b) the veracity of the information provided to EPA by Respondent relating to Respondent's involvement with the Site. This covenant not to sue extends only to Respondents and their successors in interest, and does not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES

22. The covenant not to sue by the United States set forth in Paragraph 21 does not pertain to any matters other than those expressly specified in Paragraph 21. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all other matters including, but not limited to:

a. liability for failure to meet a requirement of this Consent Order;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or

d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Order.

23. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent no longer qualifies as a de minimis party at the Site because such Respondent contributed more than 55,000 gallons of materials containing hazardous substances or because such Respondent sent hazardous substances to the Site which are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

XII. COVENANT NOT TO SUE BY RESPONDENTS

24. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at the Site; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

25. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

27. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. The United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 21.

29. The Parties agree that each Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are all response actions taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.

XIV. PARTIES BOUND

30. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

XV. INTEGRATION/APPENDICES

31. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

"Appendix A" is [the list of Respondents].

"Appendix B" is [the map of the Site].

XVI. PUBLIC COMMENT

32. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

33. The Attorney General or his designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XVIII. EFFECTIVE DATE

34. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 32 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: _____
 William E. Muno
 Superfund Division Director
 Region 5, U.S. EPA

 [Date]

THE UNDERSIGNED RESPONDENT enters into this Consent Order in the matter of **Docket Number:** _____, relating to the **Chemical Recovery Systems Site in Elyria, Ohio.**

FOR RESPONDENT: MILLER STUDIO INC
[Name]

734 fair ave nw NEW PHILADELPHIA OH 44663
[Address]

By:

John A. Basiletti
[Name]

01-08-03

[Date]